

JUL 01 2005

KRIEG · DEVAULT LLP

ATTORNEYS AT LAW

FAX COVER PAGE

DATE: July 1, 2005

PAGES INCLUDING THIS PAGE: 10

TO: United States Patent and Trademark Office
COMPANY:FAX NUMBER: (703) 872-9306
PHONE NUMBER:

FROM: Brad A. Schepers

DIRECT DIAL: (317) 238-6334

FAX NUMBER: (317) 636-1507

RE: Request for Continued Examination for USSN 10/644,252, Attorney Docket: 4002-3378/PC242.38

COMMENTS: I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office at 703-872-9306 on:

July 1, 2005
(Date of Transmission)Brad A. Schepers
Name of Registered Representative

Signature

Hard copy will be sent via: ☐ Regular Mail ☐ Overnight Courier ☒ Fax-Communication Only

Name of Sender: Brad A. Schepers

Client Matter No.: 4002-3378/PC242.38

WARNING CONFIDENTIALITY NOTICE

The documents constituting this fax transmittal contain confidential information belonging to the sender which is legally privileged. The information is intended only for the use of the individual(s) or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance upon the content of this fax transmittal is strictly prohibited. If you have received this fax transmittal in error, please immediately notify us by telephone at the number below to arrange for return of the original documents to us. Thank you.

For Questions or Problems in Transmission, Please Contact our Fax Operators

KRIEG DEVAULT LLP
ONE INDIANA SQUARE
SUITE 2800
INDIANAPOLIS, IN 46204
TELEPHONE-(317) 636-4341
FAX-(317) 636-1507

KRIEG DEVAULT LLP
12800 N MERIDIAN STREET
SUITE 300
CARMEL, IN 46032
TELEPHONE-(317) 566-1110
FAX-(317) 636-1507

KRIEG DEVAULT GALVIN
LLP
5231 HOHMAN STREET
HAMMOND, IN 46320
TELEPHONE-(219) 933-0380
FAX-(219) 933-0471

KRIEG DEVAULT LUNDY
LLP
825 ANTHONY WAYNE
BUILDING
203 EAST BERRY STREET
FT. WAYNE, IN 46802
TELEPHONE-(260) 422-1534
FAX-(260) 423-1590

IM-596163_1.DOC

JUL 01 2005

PTO/SB/21 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031

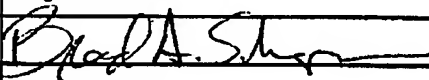
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

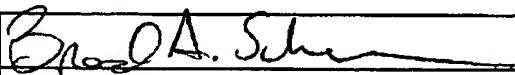
TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/544,252
	Filing Date	August 20, 2003
	First Named Inventor	Thomas Zdeblick
	Art Unit	3731
	Examiner Name	Julian W. Woo
Total Number of Pages in This Submission	Attorney Docket Number	4002-3378/PC242.38

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input checked="" type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Request for Continued Examination Form PTO 1449 Form PTO 2038
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Krieg DeVault LLP		
Signature			
Printed name	Brad A. Schepers		
Date	July 1, 2005	Reg. No.	45,431

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:			
Signature			
Typed or printed name	Brad A. Schepers	Date	July 1, 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

09-10-2004 17:50 From:MARTINAFERRAROLLP

3308772030

T-204 P.011/013 F-423

RECEIVED
CENTRAL FAX CENTERPATENT
Attorney Docket No. 102.0001-12000
Customer No. 22882

JUL 01 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:) Confirmation No : 4978
Gary Karlin Michelson)
Serial No.: 10/740,747) Group Art Unit: 3738
Filed: December 19, 2003)
For: SPINAL IMPLANT FOR INSERTION)
BETWEEN VERTEBRAL BODIES)

Mail Stop AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED
CENTRAL FAX CENTER

SEP 10 2004

Sir:

THIRD REQUEST FOR INTERFERENCE UNDER 37 C.F.R. § 1.604

Applicant hereby requests an interference with U.S. Application No. 10/644,252 (U.S. Publication No. 2004/0097928) to Zdeblick et al. (hereinafter, "Zdeblick") pursuant to 37 C.F.R. § 1.804(a). A proposed count is attached hereto.

Claims 44 and 46-48 of Zdeblick correspond to claims 1-4, respectively, of the proposed count. Claims 6-9 of the present application correspond to claims 1-4 of the proposed count.

Applicant requests an interference with Zdeblick because the aforementioned claims of Zdeblick cover subject matter which was invented by Applicant prior to the earliest priority date of Zdeblick.

Applicant submits that the subject matter of claims 1-4 of the proposed count are fully supported by Applicant's original disclosure, for example, on page 8, line 25 to page 9, line 3; page 12, lines 18-23; and Fig. 4A. The Examiner is requested to declare an interference between the present application and U.S. Application No. 10/644,252.

Third Request for Interference 8-10-04

PAGE 11/13 * RCVD AT 8/10/2004 5:42:27 PM [Eastern Daylight Time] * SVR:USPTO-EFAX-1/1 * DNIS:8729306 * CSID:3308772030 * DURATION (mm:ss):03:03

09-10-2004 17:50 From: MARTIN&FERRAROLLP

3308772030

T-204 P.012/018 F-423

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-1068.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: September 10, 2004

By: Thomas H. Martin
Thomas H. Martin
Registration No. 34,383

1557 Lake O'Pines Street, NE
Hartsville, Ohio 44632
Telephone: 330-877-0700
Facsimile: 330-877-2030

-2-

PAGE 12/13 * RCVD AT 9/10/2004 5:42:27 PM [Eastern Daylight Time] * SVR:USPTO-EFAXF-1/1 * DNIS:8729306 * CSID:3308772030 * DURATION (mm-ss):03-03

08-10-2004 17:59 From:MARTINAFERRAROLI

3308772030

T-204 P.013/019 F-423

PROPOSED COUNT UNDER 37 C.F.R. § 1.604(a)(1)

1. A fusion device for facilitating arthrodesis in a disc space between adjacent vertebrae, comprising:
an elongate body having a length and including a pair of oppositely disposed arcuate side walls extending along said length and adapted for engagement with the adjacent vertebrae, said arcuate side walls defining external threads extending substantially entirely along said length, said elongate body at least partially formed of a porous biocompatible material to permit bone tissue ingrowth into said arcuate side walls.
2. The fusion device of claim 1, wherein said elongate body has a hollow interior and at least one opening in communication with said hollow interior.
3. The fusion device according to claim 2, further comprising a bone growth inducing material disposed within said hollow interior.
4. The fusion device of claim 2, wherein said at least one opening extends through a corresponding one of said arcuate side walls.